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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/652,713	08/31/2000	Trung T. Doan	93-0421.04	4284

7590 05/28/2002
Charles Brantley
800 S Federal Way M/S 525
Boise, ID 83716-9632

EXAMINER

MACARTHUR, SYLVIA

ART UNIT	PAPER NUMBER
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1763

DATE MAILED: 05/28/2002

12

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 12

Application Number: 09/652,713
Filing Date: August 31, 2000
Appellant(s): DOAN, TRUNG T.

Charles B. Brantley II
For Appellant

EXAMINER'S ANSWER

MAILED

MAY 28 2002

GROUP 1700

Charles B. Brantley II
Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 525
Boise, ID 83716-9632

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This is in response to the appeal brief filed May 2, 2002.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. On February 19, 2002, Appellant submitted a Notice of Appeal as part of the prosecution of serial no. 09/133,989, which was filed August 14, 1998. Application '989 is the parent application to the current application under appeal. The Appeal Brief was filed May 10, 2002.

On February 28, 2002, appellant submitted an Appeal Brief as part of the prosecution of application serial no. 09/652,969, which was filed August 31, 2000. Application '969 is a divisional of '989 and therefore a sibling of the current application under appeal.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

Claims 1-35 and 38-43 have been cancelled.

Claims 36 and 37 are pending.

Claims 36 and 37 stand finally rejected.

(4) *Status of Amendments After Final*

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The appellant's statement of the status of amendments after final rejection contained in the brief is correct. Appellant has filed no amendments subsequent to final rejection.

(5) *Summary of Invention*

The summary of invention contained in the brief is generally correct. The present invention addresses an edge bead. The device comprises a dispenser and a splash controller around the dispenser. The splash controller is physically unattached from the edge bead and is configured to draw the chemical toward the splash controller. The splash controller is configured to generate a gas pressure around the edge bead that is lower than an ambient gas pressure and further configured to physically intercept the chemical.

(6) *Issues*

The appellant's statement of the issues in the brief is correct. The issue is whether the examiner has failed to satisfy the burden for rejecting the claims as being anticipated by Hurtig USP 5,289,222.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 36 and 37 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(9) Prior Art of Record

Patent Number	Inventor	Publication Date
5,289,222	Hurtig	02-1994

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 36 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Hurtig (USP 5,289,222).

Hurtig discloses drain arrangement for photoresist coating apparatus. In Figure 2, a splash guard (splash controller) 104B is shown around the edge bead removal nozzle 104C and the edge bead of wafer 103.

The splash controller is shown physically unattached from the edge bead and configured to draw chemical toward the splash controller. The splash controller is also configured to physically intercept the chemical. The splashguard (splash controller) inherently generates a gas pressure around the edge bead that is lower than an ambient gas pressure. This lowering of pressure provides the suction.

(11) Response to Argument

A. Examiner has misinterpreted Hurtig

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Appellant cites that claim 36 requires that the splash controller be configured to draw toward itself a particular chemical. It is also required that the splash controller be configured to physically intercept the chemical. Appellant argues that the examiner has cited that no portion of the Hurtig reference indicates that its guard is configured to draw toward itself any chemical. In response to this argument, examiner has constructed the following comparison table:

Claim 36 of present inventionHurtig

Dispenser releasing chemical toward edge bead

Edge bead removal nozzle 104C

Splash controller around dispenser

Splash guard 104B

Note: The splash guard of Hurtig is shown physically unattached from the edge bead and configured to draw chemical toward the splash controller. See Figures 1, 2, and 4. The splash guard is also configured to physically intercept the chemical. The splash guard (splash controller) inherently generates a gas pressure around the edge bead that is lower than an ambient gas pressure. This lowering of pressure provides the suction.

Appellant contends that the Examiner cannot meet the burden for rejection relying on Hurtig. Appellant notes that Hurtig's device comprises drain lines 105, 106, 405, and 406 that are configured to draw a chemical toward themselves and away from the splash guard. Appellant argues, however, that the location in relation to Hurtig's splash guard, having both the drain lines and splash guard draw chemicals toward themselves would result in a device whose components compete and interfere with each. Thus, appellant believes that the device would be unworkable.

In response to this argument, affidavits or declarations attacking the operability of a patent cited as a reference must rebut the presumption of operability by a preponderance of the evidence. In re Sasse, 629 F.2d 675, 207 USPQ 107 (CCPA 1980). See MPEP 716.07.

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B. Examiner's assumptions concerning inherent features fail to meet case precedent standards.

Claim 36 requires that its splash controller be configured to generate around the edge bead a gas pressure that is lower than an ambient gas pressure. Appellant argues with examiner's notion that Hurtig's splash guard inherently generates such pressure. In response to his argument, examiner notes that the splash controller of Hurtig operates by suction, which is by definition by vacuum or at a pressure lower than ambient pressure.

Appellant cites *In re Zurko* that examiner "cannot reach conclusions based on its own understanding or experience". Based upon the definition of suction, which Hurtig uses as his mode of splash guard operation, examiner does not rely upon "her own knowledge or understanding", but relies solely upon the teachings of Hurtig.

C. The piecemeal and incomplete nature of Examiner's rejection favors reversing the Examiner as a matter of policy.

Appellant's remarks under item "C" have been considered, but are irrelevant and moot.

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D. Conclusion

In summary, examiner has clearly shown how the prior art by Hurtig anticipates the present invention. For this reason, it is believed that the rejections should be sustained.

Respectfully submitted,

Sylvia MacArthur

Assistant Examiner

Sylvia MacArthur

Gregory Mills

Supervisory Examiner

Gregory Mills

Marion Knode

Appeal Conferee

Marion Knode

May 24, 2002

Charles B. Brantley II
Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 525
Boise, ID 83716-9632